

The within Lease has been executed in 14 counterparts of which this is counterpart number 5.

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INTERSTATE COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT

UNION PACIFIC RAILROAD COMPANY,
Lessor,

to

**CHICAGO, ROCK ISLAND AND PACIFIC
RAILROAD COMPANY,**
Lessee.

Dated as of May 1, 1971

LEASE OF RAILROAD EQUIPMENT, dated as of May 1, 1971, between UNION PACIFIC RAILROAD COMPANY, a Utah corporation (hereinafter called the Lessor), and CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY, a Delaware corporation (hereinafter called the Lessee).

WHEREAS, the Lessor is concurrently herewith entering into a Conditional Sale Agreement, dated as of May 1, 1971 (hereinafter the Conditional Sale Agreement) with International Car Company (Division of International Ramco, Inc.), The Darby Products of Steel Plate Corporation (hereinafter severally the Manufacturer and collectively the Manufacturers) and certain other manufacturers providing for purchase by the Lessor of units of railroad equipment described in Schedule A thereto (hereinafter the Equipment); and

WHEREAS, the Lessee desires to lease from the Lessor certain units of Equipment described in Schedule A hereto (hereinafter the Units) at the rentals and for the terms and upon the conditions hereinafter provided and subject to the rights of the Manufacturers in such Units under the Conditional Sale Agreement;

Now, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee but subject and subordinate to all of the provisions of the Conditional Sale Agreement and the rights and remedies of the Manufacturers thereunder upon the following terms and conditions, namely:

SECTION 1. *Delivery and Acceptance of Units.* The Lessor will cause each Unit to be tendered to the Lessee, and upon such tender the Lessee will cause such unit to be

inspected by its authorized representative. If such representative finds that such Unit conforms to the specifications with respect thereto and if delivery is accepted, the Lessee will cause such representative to execute and deliver to the Lessor and to the Manufacturer of such Unit, a certificate of acceptance stating that such Unit has been inspected and accepted on behalf of the Lessee and is marked in accordance with *Section 4* hereof. Such certificate of acceptance shall be conclusive evidence that the Units covered thereby have been delivered to and accepted by the Lessee and conform to the said specifications and are acceptable to the Lessee in all details and the said Units shall be subject thereafter to all of the terms and conditions of this Lease.

SECTION 2. *Rentals.* The Lessee agrees to pay to the Lessor, as advance rental for each Unit subject to this Lease, 60 consecutive quarterly payments, each in an amount equal to 2.739% of the Invoiced Rental Base (as hereinafter defined) of such Unit, as hereinafter provided. The term Invoiced Rental Base in respect of any Unit shall mean the Final Purchase Price of such Unit as set forth in the Final Certificate of the Manufacturer of such Unit with respect thereto delivered to the Lessor pursuant to Article 3 of the Conditional Sale Agreement. Pending receipt of such certificate the Invoiced Rental Base shall be considered to be Purchase Price of such Unit stated in the invoice from the Manufacturer with respect thereto. In the event that any such certificate states that the Final Purchase Price of such Unit is different from the Invoiced Purchase Price, the Lessor and Lessee shall adjust their respective accounts and thereupon make payment accordingly so as to give retroactive effect to the Final Purchase Price.

The payments to be made by the Lessee pursuant to this *Section 2* shall commence on October 1, 1971 with respect to

Units settled for under the Conditional Sale Agreement prior and including September 25, 1971, on January 1, 1972, with respect to Units so settled for from September 26, 1971 to and including December 25, 1971, and on April 1, 1972 with respect to Units so settled for from December 26, 1971 to and including March 25, 1972, and shall be made quarterly thereafter on January 1, April 1, July 1 and October 1. Payment shall be made in Federal Funds on the aforementioned payment dates except where such payment date shall not be a business day, in which event on the preceding business day. As promptly as possible, the Lessor shall prepare and submit to the Lessee a rental payment schedule setting forth the Invoiced Rental Base of each Unit and the amount and method of calculation of the rental payments required by this *Section 2*.

All payments provided for in this Lease to be made to the Lessor shall be made to the Lessor at 345 Park Avenue, New York, N. Y. 10022, or at such other place as the Lessor shall specify in writing.

This Lease is a net lease, and the Lessee shall not be entitled to any abatement of rent, reduction thereof or set-off against rent, including, but not limited to, abatements, reductions or set-offs due or alleged to be due to, or by reason of, any past, present or future claims of the Lessee against the Lessor under or with respect to this Lease or otherwise, or against any Manufacturer of the Units or against any person or entity having or claiming to have a beneficial interest in any Unit; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect or alleged defect in or damage or alleged damage to or loss or loss of possession or loss of use of or destruction of all or any of the Units from whatsoever cause, the prohibition

of, or other restriction against, the Lessee's use of all or any of the Units, the interference with such use by any private person or entity, the invalidity, illegality or unenforceability or lack of due authorization of this Lease, or lack of right, power or authority of the Lessor to enter into and/or perform this Lease, or by reason of any failure by the Lessor to perform any of its obligations herein contained, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease.

SECTION 3. *Term of Lease.* The term of this Lease as to each Unit shall begin on the date of the delivery to and acceptance by the Lessee of such Unit and, subject to the provisions of *Sections 6, 9, 11 and 12* hereof, shall terminate with respect to such Unit on the last day of the quarter in respect of which rental payments are to be made hereunder unless theretofore terminated as provided in *Section 7* or otherwise extended pursuant to *Section 13* hereof.

SECTION 4. *Identification Marks.* Upon or before the delivery to the Lessee of each of the Units, there shall be plainly, distinctly, permanently and conspicuously marked upon each side of such Unit the following words in letters not less than one inch in height:

“UNION PACIFIC RAILROAD COMPANY, LESSOR”

If during the continuance of this Lease any such mark shall at any time be removed, defaced or destroyed on any Unit, the Lessee shall immediately cause the same to be restored or replaced. The Lessee shall not allow the name

of any person, association or corporation to be placed on any of the Units as a designation which might be interpreted as indicating a claim of ownership thereof by any person, association or corporation other than the Lessor; provided, however, that the Lessor may cause the Units to be marked as contemplated in Article 6 of the Conditional Sale Agreement, and the Lessee may letter the Units with the names or initials or other insignia customarily used by the Lessee on its railroad units of the same or a similar type for convenience of identification of the right of the Lessee to use and operate the Units under this Lease and to interchange the same with other railroad companies, provided such names or initials or other insignia, when placed on the Units do not conflict with any of the provisions of such Article 6.

SECTION 5. *Numbering.* Upon or before the delivery to the Lessee of each of the Units, there shall be plainly, distinctly, permanently and conspicuously marked by the manufacturer of such Unit upon each side of each such Unit, in close proximity to the words provided for in the first sentence of *Section 4* hereof, its identifying number as set forth in Schedule A hereto. The Lessee shall not change, or permit to be changed, the identifying number on any of the Units except in accordance with a statement of new number(s) to be substituted therefor, which shall previously have been filed with the Lessor and consented to by the Lessor and filed, registered or recorded in each public office where this Lease shall have been filed, registered or recorded.

SECTION 6. *Taxes.* With respect to each of the Units, the Lessee agrees that, in addition to the other payments provided herein, it will timely pay, or promptly reimburse the Lessor should payment be made by it, for all local, State or Federal, property, sales, use, gross receipts taxes in the

nature of sales taxes, occupation, franchise and other taxes (excluding any Federal income and excess profits taxes and excluding also any local or State income, gross receipts, franchise, excess profits and similar taxes, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided), fees, charges, assessments (hereinafter collectively called Impositions), (a) levied or imposed upon, measured by or exacted because of, (i) the Conditional Sale Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms thereof, (ii) the Units or the interest of the Lessee or the Lessor in such Units or the use, operation or leasing thereof or the rentals or earnings arising therefrom or (iii) the Lessor on account of its acquisition or ownership of the Units or any thereof or on account of the use, operation or leasing thereof or on account of the rentals or earnings arising therefrom, or (b) the nonpayment of which might result in any lien or encumbrance upon any of the Units or adversely affect the title or interest of the Manufacturer in or to any of the Units. The Lessee further agrees that it will promptly pay or reimburse the Lessor for any interest or penalties payable by the Lessor resultant from any delay in paying any Imposition which the Lessee has herein agreed to pay or reimburse, or from the failure of the Lessor to withhold or collect and pay over any Imposition. Notwithstanding the foregoing, the Lessee shall not be required to pay or reimburse any Imposition or any such interest or penalties so long as it shall in good faith and by appropriate legal or administrative proceedings contest the validity or amount thereof unless thereby, in the judgment of the Lessor, the rights or interests of the Lessor will be adversely affected.

In the event any reports with respect to Impositions are required to be made on the basis of individual Units, the Lessee will either make such reports in such manner as to show the interests of the Lessor in such Units or

will notify the Lessor of such requirement and will make such reports in such manner as shall be satisfactory to the Lessor.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any Impositions, interest or penalties pursuant to this *Section 6*, such liability shall continue, notwithstanding the expiration of the term of this Lease, until all Impositions, interest or penalties are paid or reimbursed by the Lessee.

SECTION 7. Maintenance; Payment for Units Suffering Casualty Occurrence. The Lessee shall at all times maintain and keep all of the Units subject to this Lease in good order and good running repair, under a repair program consistent with a useful life for each of the Units in excess of 17 years from the commencement of the term of this Lease as to such Unit, at its own cost and expense.

In the event that any Unit shall be or become worn out, lost, stolen, destroyed or irreparably damaged or otherwise rendered permanently unfit for use from any cause whatsoever (such occurrences being hereinafter called Casualty Occurrences) during the term of this Lease, the Lessee shall promptly (after it has knowledge of such Casualty Occurrence) and fully inform the Lessor in regard thereto. The Lessee shall, on the earlier of the next succeeding rental payment date in respect of such Unit, or the expiration of the term of this Lease, pay to the Lessor a sum equal to the Casualty Value of such Unit as of the date of such Casualty Occurrence. For purposes of this *Section* the term Casualty Value shall be deemed to be that proportion of the unpaid balance of the Conditional Sale Indebtedness (as defined in the Conditional Sale Agreement) in respect of the Unit as the Final Purchase Price of the Unit bears to the Final Purchase Price of all Units of such Manufacturer.

Upon making such payment in respect of any Units, rentals of such Units shall cease as of the date of such payment, the term of this Lease as to such Units shall terminate and title to and rights in such Units shall thereupon vest in Lessee. The Lessor shall promptly thereafter prepare and submit to the Lessee a revised rental payment schedule, reflecting such payment and setting forth the rental payment required by *Section 2* for all Units remaining under this Lease.

Except as hereinabove in this *Section 7* provided, the Lessee shall not be released from its obligation hereunder in the event of any Casualty Occurrence to any Unit after delivery to and acceptance thereof by the Lessee hereunder.

SECTION 8. *Annual Reports and Inspection.* The Lessee will furnish to the Lessor on or before the last day of March in each year, commencing with the year 1973, and at such other times as the Lessor shall request, during the continuance of this Lease, an accurate statement signed by one of the Vice Presidents of the Lessee, stating

A. as of the last day of the preceding calendar year, (1) the description and identifying numbers of all Units then subject to this Lease, (2) the description and identifying numbers of all Units that have suffered a Casualty Occurrence during the period elapsed since the end of the period covered by the last previous such report (or since the date hereof in the case of the first such report), and (3) such other information regarding the condition and state of repair of the Units as the Lessor may reasonably request, and

B. that, in the case of all Units repainted or repaired during such period, the marks required to be placed thereon by *Section 4* hereof have been preserved on such Units or that such Units have been again marked as required by said *Section 4* and that the identifying symbol and the appropriate car number has been repainted or preserved on each side of each such Unit in accordance with *Section 5* hereof.

The Lessor shall have the right, by its authorized representatives, to inspect the Units at such times as shall be reasonably necessary to confirm to the Lessor the existence and proper maintenance thereof during the continuance of this Lease.

SECTION 9. *Compliance with Laws and Rules; and Indemnification.* The Lessor makes no warranty or representation, either expressed or implied, as to the fitness, design or condition of, or as to the quality of the material, equipment or workmanship in, the Units delivered to the Lessee hereunder, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee.

The Lessee agrees to comply with all governmental laws, regulations and requirements, with the Rules of Interchange of the Association of American Railroads (or of any successor thereto), and with all lawful rules of the Interstate Commerce Commission and the Department of Transportation and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, with respect to the use, maintenance and operation by the Lessee of each Unit subject to this Lease; in case any equipment or appliance on any such Unit shall be required to be changed or replaced, or in case any additional or other equipment or appliance is required to be installed on such Unit in order to comply with such laws, regulations, requirements and Rules, effective after the date of the delivery of such Unit, the Lessee agrees to make such changes, additions and replacements; and the Lessee agrees to maintain such Unit in full compliance with such laws, regulations, requirements and Rules so long as it is subject to this Lease.

Any and all additions to the Units and any and all replacements of any parts of any Unit and additions thereto (except such as are not required pursuant to

the second paragraph of this *Section 9* and may be removed without in any way affecting or impairing either the originally intended function or the use of such Unit) shall be considered accessions to such Unit and title thereto shall be immediately vested in the owner of the Unit without cost or expense to it.

The Lessee agrees to indemnify and save harmless the Lessor against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, by reason of the Lessor's undertakings with respect to the Units pursuant to the Conditional Sale Agreement or the ownership by the Lessor of any Unit or the use or operation thereof by the Lessee while it is subject to this Lease, or in any manner arising out of or as a result of the delivery or rejection of any of the Units under this Lease or under the Conditional Sale Agreement prior to the delivery thereof under or while it is subject to this Lease or the use or operation of any Unit while it is subject to this Lease. The Lessee agrees further to indemnify and save harmless the Lessor against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Lessor (including but not limited to the Lessor's undertakings pursuant to the Conditional Sale Agreement) because of the use in or about the construction of the Units, or any thereof, of any design specified by the Lessee, or article or material specified by the Lessee, and not manufactured by the manufacturer of such Unit, which infringes, or is claimed to infringe, on any patent or other right. The indemnities contained in this paragraph shall continue in full force and effect notwithstanding the full payment of all other obligations under this Lease or the termination of this Lease in any manner whatsoever.

SECTION 10. *Default.* If, during the continuance of this Lease, one or more of the following events (herein sometimes called events of default) shall occur:

A. default shall be made in the payment of any part of the rental provided in *Section 2* hereof and such default shall continue for 30 days;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the Units, or any thereof, and shall fail or refuse to cause such assignment or transfer to be cancelled by agreement of all parties having any interest herein and to recover possession of such Units within 30 days after written notice from the Lessor to the Lessee demanding such cancellation and recovery of possession;

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein and such default shall continue for 30 days after written notice from the Lessor to the Lessee specifying the default and demanding the same to be remedied;

D. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Lessee, and all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings, or otherwise given a status comparable to the obligations incurred by such a trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier;

E. any other proceedings shall be commenced by or against the Lessee for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any

readjustment of the obligations of the Lessee hereunder), and all of the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Lessee or for the property of the Lessee in connection with any such proceedings, or otherwise given a status comparable to obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

F. if one or more of the Events of Default enumerated in Article 17 of the Conditional Sale Agreement shall occur, and shall be continuing;

then, in any such case, the Lessor, at its option, may

(a) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all right of the Lessee in or to the Units, or as to the use thereof, shall absolutely cease and determine as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon, the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units (and may use and employ, in connection with such repossession, any supplies, services and aids and any available trackage and other facilities or means of the Lessee, with or without process of law) and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination and, in the case of those events of default specified in subparagraphs A, B, C, D and

E hereof, also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, a sum which represents the excess of the present worth, at the time of such termination, of the aggregate rental for each Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of such Units over the then present worth of the fair rental value of such Units for such period, such present worth to be computed in each case on the basis of an 8% per annum discount, compounded quarterly from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, and (ii) any damages in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant or covenants herein contained.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify any of the remedies herein provided, to the extent that such waiver is permitted by law.

The failure of the Lessor to exercise the rights granted it hereunder upon any occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

SECTION 11. *Return of Units.* Upon the expiration of the term of this Lease with respect to any Unit, the Lessee shall forthwith deliver possession of such Unit, to the Lessor in good order and repair, ordinary wear and tear excepted. Upon the termination of this Lease pursuant to the provisions of *Section 10* hereof, the Lessee shall forthwith deliver possession of all Units to the Lessor in good order and repair, ordinary wear and tear excepted. For

the purpose of delivering possession of any Units to the Lessor as above required, the Lessee shall at its own cost and expense

A. forthwith assemble the Units and place them upon such storage tracks of the Lessee as the Lessor may designate or, in the absence of such designation, as the Lessee may select,

B. permit the Lessor to store the Units on such tracks for a period not exceeding 100 days at the risk of the Lessor, and

C. transport the same in such groups as the Lessor may reasonably select, at any time within such 100-day period, to any place or places on the lines of railroad operated by it or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this *Section 11*, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whosoever shall be at the time in possession of such Unit.

SECTION 12. Assignment and Possession. This Lease shall be assignable, in whole or in part, by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor.

The rights of the Lessee in and to the Units under this Lease are subject to the rights of the Manufacturers and their successors, and assigns in and to such Units under the Conditional Sale Agreement including the rights of the Manufacturers upon the happening of an Event of Default thereunder and so long as the Lessee shall not be in default under this Lease as provided in *Section 10* hereof, and the Lessor shall not be in default under the Conditional Sale Agreement as provided in Article 17 thereof, the Lessee shall be entitled to the possession and use of the Units, in accordance with the terms of this Lease, upon the lines of railroad owned or operated by the Lessee, or over which the Lessee has trackage rights, and the Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except that the Lessee may permit the use thereof or any part thereof by connecting and other railroads in the usual interchange of traffic.

The Lessee shall not, without the prior written consent of the Lessor, assign, transfer or encumber its leasehold interest under this Lease in the Units or any of them (except to the extent that the provisions of any existing mortgages or indentures affecting property of the Lessee may attach to such leasehold interest or require the same to be subjected thereto). In addition, the Lessee, at its own expense, will as soon as possible cause to be duly discharged any lien, charge or other encumbrance (except for any encumbrance resulting from any security interest created by the Lessor, including the rights of the Manufacturers under the Conditional Sale Agreement or resulting from any claim against the Lessor not related to the Lessor's rights of ownership to the Units or from the lien of existing mortgages or indentures of the Lessee as aforesaid or from Impositions with respect to which the Lessee is not required to make payment or reimbursement under

Section 6 hereof) which may at any time be imposed on or with respect to any Unit or the interest of the Manufacturers or the Lessor or the Lessee therein.

Nothing in this *Section* shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any corporation (which shall have assumed the obligations hereunder of the Lessee) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety; nor shall any assignment or transfer of such leasehold interest or of possession or control of the Units or any thereof to a receiver or trustee or other court officer appointed in any judicial proceedings under circumstances which do not constitute an event of default under *Section 10D* or *E* hereof be deemed to constitute a violation of this *Section 12*.

SECTION 13. *Purchase Option.* Not earlier than six months prior to the end of the term of this Lease with respect to each Unit and not later than two months prior thereto, the Lessee may cause the Appraiser (as hereinafter defined) to make, at the expense of the Lessee, an appraisal of the fair market value of Units comprising one or more Lots (as hereinafter defined), and the report of the Appraiser setting forth its determination of such value shall be delivered to the Lessor and the Lessee not later than one month prior to the end of the term for the Unit to be last terminated under this Lease.

If the Lessee shall cause such appraisal to be made, the Lessee may, by written notice delivered to the Lessor not later than the day before the last day of the term for the last Unit to be terminated under this Lease, elect, unless an Event of Default as defined in *Section 10* hereof shall have occurred and be continuing, to purchase all, but not fewer than all, the Units comprising any Lot, the fair market value of which shall have been so determined, such pur-

chase to be subject to the prior satisfaction in full by the Lessor of all of its obligations under the Conditional Sale Agreement and to be effective at the termination of this Lease as to such Units as provided in *Section 3* hereof and to be at an aggregate purchase price equal to such fair market value of such Units, which option purchase price shall be payable by the Lessee to the Lessor in one lump sum not later than 30 days after such election. This Lease shall continue with respect to Units which the Lessee shall have so elected to purchase beyond the term as provided in *Section 3* hereof and until the date on which such option purchase price shall have been paid in full, or July 1, 1986, whichever first occurs, at an aggregate rental of \$1 per month, such continuation being intended to protect the Lessor's rights and/or title to, and to continue all obligations of the Lessee hereunder with respect to, such Units while the purchase price in respect thereof remains unpaid. Upon payment in full of such option purchase price, the Lessor shall upon request of the Lessee execute and deliver to the Lessee, or to the Lessee's assignee or nominee a bill of sale (without representations or warranties except that such Units are free and clear of all claims, liens and encumbrances by or in favor of any person claiming by, through or under the Lessor) for such Units, and such other documents as may be required to transfer title to such Units to the Lessee or such assignee or nominee, in such form as may be reasonably requested by the Lessee, all at the Lessee's expense.

For the purposes of this *Section 13*, the Units shall be divided into two lots (each of which is hereinafter called a Lot), each Lot to consist of all of the Units which were originally manufactured by the Manufacturer thereof. The term Appraiser shall mean such independent appraiser as the Lessor and the Lessee may mutually agree upon, or, failing such agreement, a panel of three independent appraisers, one of which shall be selected by each of the Lessor and the Lessee with the third designated by the two so selected.

SECTION 14. *Opinion of Counsel.* Concurrently with the execution and delivery of this Lease, the Lessee will deliver to the Lessor the written opinion of counsel for the Lessee, in scope and substance satisfactory to the Lessor and its counsel, to the effect

A. that the Lessee is a corporation legally incorporated and validly existing, in good standing, under the laws of the State of Delaware, with adequate corporate power to enter into this Lease;

B. that this Lease has been duly authorized, executed and delivered by the Lessee and constitutes a valid, legal and binding agreement of the Lessee enforceable in accordance with its terms;

C. that if this Lease is filed with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act, it need not, in order to protect the Lessor's interest in and to the Units in the United States of America, be otherwise filed, deposited, registered or recorded with any other Federal, State or local government in the United States of America;

D. that no approval is required from any public regulatory body with respect to the entering into or performance of this Lease; and

E. that the entering into and performance of this Lease will not result in any breach of, or constitute a default under, or result in the creation of any lien, charge or encumbrance upon the Lessee's leasehold interest under this Lease in the Units (except to the extent that the provisions of any existing mortgage or indenture affecting property of the Lessee may attach to such leasehold interest or require the same to be subjected thereto) pursuant to any indenture, mortgage, deed of trust, bank loan or credit agreement or other instrument to which the Lessee is a party or by which it may be bound.

SECTION 15. *Recording.* The Lessor will, prior to the delivery of any Unit hereunder, cause this Lease to be filed and recorded with the Interstate Commerce Com-

mission in accordance with Section 20c of the Interstate Commerce Act; and the Lessee will from time to time do and perform any other act and will execute, acknowledge, deliver, file and record wherever required any and all further instruments required by law or reasonably requested by the Lessor for the purpose of proper protection, to the satisfaction of counsel for the Lessor, of its rights and/or title to the Units and its other rights under this Lease or for the purpose of carrying out the intention of this Lease.

SECTION 16. *Notices.* Any notices required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States mails, first-class postage prepaid, addressed as follows:

If to the Lessor:

UNION PACIFIC RAILROAD COMPANY,
345 Park Avenue,
New York, N. Y. 10022
Attention: Vice President—Finance

If to the Lessee:

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD
COMPANY
139 West Van Buren Street,
Chicago, Illinois 60605
Attention: Secretary

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

SECTION 18. *Applicable Law.* This Lease is to be construed in accordance with the laws of the State of New York; provided, however, that the parties hereto shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

SECTION 19. *Enforcement by Manufacturers and its Assignees.* The provisions of this Lease, as they relate to a Manufacturer, are for the benefit of the Manufacturer and may be enforced by the Manufacturer to the same extent as if it were a party hereto, as a third party beneficiary hereof, without any assignment thereof to the Manufacturer and without any responsibility by the Lessor in connection therewith.

SECTION 20. *Execution in Counterparts.* This Lease, and any lease supplemental hereto, may be executed in several counterparts, each of which so executed shall be deemed to be an original, and in each case such counterparts together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the Lessor and the Lessee, pursuant to due corporate authority, have caused these presents to be signed in their respective corporate names and their respective corporate seals to be hereunto affixed, duly attested, as of the day and year first above written.

UNION PACIFIC RAILROAD COMPANY,
Lessor,

Attest: *R. B. Gans*
.....
ASSISTANT Secretary.

By .. *W. S. Cook*
Vice President—Finance.

CHICAGO, ROCK ISLAND AND PACIFIC
RAILROAD COMPANY,
Lessee,

Attest: *E. T. Wilkinson*
Secretary.

By .. *William J. Dixon*
Vice President.

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

On this 11th day of August, 1971, before me personally appeared *W. J. Dixon*, to me personally known, who, being by me duly sworn, says that he is a Vice President of UNION PACIFIC RAILROAD COMPANY, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Elizabeth L. Calpine (V. 111A)
.....

Notary Public

ELIZABETH L. CALPINE (V. 111A)

Notary Public, State of New York

My Comm. Exp. 3/30/72

STATE OF ILLINOIS }
COUNTY OF COOK } ss.:

On this 5th day of August, 1971, before me personally appeared *William J. Dixon*, to me personally known, who, being by me duly sworn, says that he is a Vice President of CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Richard Allen Kiese
.....

Notary Public

NOTARY PUBLIC STATE OF ILLINOIS
MY COMMISSION EXPIRES DEC. 2, 1974

SCHEDULE A

<u>Manufacturer</u>	<u>Type</u>	<u>Specifications</u>	<u>Quantity</u>	<u>Unit Numbers</u>	<u>Unit Base Price</u>	<u>Aggregate Base Price</u>	<u>Time and Place of Delivery</u>
International Car	All steel bay window Caboose	Company's P.O. No. 6283-12, dated May 20, 1971 and accepted June 1, 1971	10	RI 17202-17211, both inclusive	\$27,500	\$ 275,000	October, 1971 Blue Island, Illinois
Darby	100-ton, 3600 cu. ft. capacity Open Top Hopper Car	Company's P.O. No. 6282-25, dated May 10, 1971 and accepted May 20, 1971	100	RI 102000-102099, both inclusive	15,985	1,598,500	August-September, 1971 Manufacturer's Plant, Kansas City, Kansas

EXHIBIT A
PERMANENT Record

DO NOT HAND OUT
1-8-28-1

The within Lease has been executed in 14 counterparts of which this is counterpart number 3.

6283
RECORDATION NO. _____ Filed & Recorded

AUG 16 1971 - 9 20 AM

INTERSTATE COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT

UNION PACIFIC RAILROAD COMPANY,
Lessor,

to

**CHICAGO, ROCK ISLAND AND PACIFIC
RAILROAD COMPANY,**
Lessee.

Dated as of May 1, 1971

LEASE OF RAILROAD EQUIPMENT, dated as of May 1, 1971, between UNION PACIFIC RAILROAD COMPANY, a Utah corporation (hereinafter called the Lessor), and CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY, a Delaware corporation (hereinafter called the Lessee).

WHEREAS, the Lessor is concurrently herewith entering into a Conditional Sale Agreement, dated as of May 1, 1971 (hereinafter the Conditional Sale Agreement) with International Car Company (Division of International Ramco, Inc.), The Darby Products of Steel Plate Corporation (hereinafter severally the Manufacturer and collectively the Manufacturers) and certain other manufacturers providing for purchase by the Lessor of units of railroad equipment described in Schedule A thereto (hereinafter the Equipment); and

WHEREAS, the Lessee desires to lease from the Lessor certain units of Equipment described in Schedule A hereto (hereinafter the Units) at the rentals and for the terms and upon the conditions hereinafter provided and subject to the rights of the Manufacturers in such Units under the Conditional Sale Agreement;

Now, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee but subject and subordinate to all of the provisions of the Conditional Sale Agreement and the rights and remedies of the Manufacturers thereunder upon the following terms and conditions, namely:

SECTION 1. *Delivery and Acceptance of Units.* The Lessor will cause each Unit to be tendered to the Lessee, and upon such tender the Lessee will cause such unit to be

inspected by its authorized representative. If such representative finds that such Unit conforms to the specifications with respect thereto and if delivery is accepted, the Lessee will cause such representative to execute and deliver to the Lessor and to the Manufacturer of such Unit, a certificate of acceptance stating that such Unit has been inspected and accepted on behalf of the Lessee and is marked in accordance with *Section 4* hereof. Such certificate of acceptance shall be conclusive evidence that the Units covered thereby have been delivered to and accepted by the Lessee and conform to the said specifications and are acceptable to the Lessee in all details and the said Units shall be subject thereafter to all of the terms and conditions of this Lease.

SECTION 2. *Rentals.* The Lessee agrees to pay to the Lessor, as advance rental for each Unit subject to this Lease, 60 consecutive quarterly payments, each in an amount equal to 2.739% of the Invoiced Rental Base (as hereinafter defined) of such Unit, as hereinafter provided. The term Invoiced Rental Base in respect of any Unit shall mean the Final Purchase Price of such Unit as set forth in the Final Certificate of the Manufacturer of such Unit with respect thereto delivered to the Lessor pursuant to Article 3 of the Conditional Sale Agreement. Pending receipt of such certificate the Invoiced Rental Base shall be considered to be Purchase Price of such Unit stated in the invoice from the Manufacturer with respect thereto. In the event that any such certificate states that the Final Purchase Price of such Unit is different from the Invoiced Purchase Price, the Lessor and Lessee shall adjust their respective accounts and thereupon make payment accordingly so as to give retroactive effect to the Final Purchase Price.

The payments to be made by the Lessee pursuant to this *Section 2* shall commence on October 1, 1971 with respect to

Units settled for under the Conditional Sale Agreement prior and including September 25, 1971, on January 1, 1972, with respect to Units so settled for from September 26, 1971 to and including December 25, 1971, and on April 1, 1972 with respect to Units so settled for from December 26, 1971 to and including March 25, 1972, and shall be made quarterly thereafter on January 1, April 1, July 1 and October 1. Payment shall be made in Federal Funds on the aforementioned payment dates except where such payment date shall not be a business day, in which event on the preceding business day. As promptly as possible, the Lessor shall prepare and submit to the Lessee a rental payment schedule setting forth the Invoiced Rental Base of each Unit and the amount and method of calculation of the rental payments required by this *Section 2*.

All payments provided for in this Lease to be made to the Lessor shall be made to the Lessor at 345 Park Avenue, New York, N. Y. 10022, or at such other place as the Lessor shall specify in writing.

This Lease is a net lease, and the Lessee shall not be entitled to any abatement of rent, reduction thereof or set-off against rent, including, but not limited to, abatements, reductions or set-offs due or alleged to be due to, or by reason of, any past, present or future claims of the Lessee against the Lessor under or with respect to this Lease or otherwise, or against any Manufacturer of the Units or against any person or entity having or claiming to have a beneficial interest in any Unit; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect or alleged defect in or damage or alleged damage to or loss or loss of possession or loss of use of or destruction of all or any of the Units from whatsoever cause, the prohibition

of, or other restriction against, the Lessee's use of all or any of the Units, the interference with such use by any private person or entity, the invalidity, illegality or unenforceability or lack of due authorization of this Lease, or lack of right, power or authority of the Lessor to enter into and/or perform this Lease, or by reason of any failure by the Lessor to perform any of its obligations herein contained, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease.

SECTION 3. *Term of Lease.* The term of this Lease as to each Unit shall begin on the date of the delivery to and acceptance by the Lessee of such Unit and, subject to the provisions of Sections 6, 9, 11 and 12 hereof, shall terminate with respect to such Unit on the last day of the quarter in respect of which rental payments are to be made hereunder unless theretofore terminated as provided in Section 7 or otherwise extended pursuant to Section 13 hereof.

SECTION 4. *Identification Marks.* Upon or before the delivery to the Lessee of each of the Units, there shall be plainly, distinctly, permanently and conspicuously marked upon each side of such Unit the following words in letters not less than one inch in height:

"UNION PACIFIC RAILROAD COMPANY, LESSOR"

If during the continuance of this Lease any such mark shall at any time be removed, defaced or destroyed on any Unit, the Lessee shall immediately cause the same to be restored or replaced. The Lessee shall not allow the name

of any person, association or corporation to be placed on any of the Units as a designation which might be interpreted as indicating a claim of ownership thereof by any person, association or corporation other than the Lessor; provided, however, that the Lessor may cause the Units to be marked as contemplated in Article 6 of the Conditional Sale Agreement, and the Lessee may letter the Units with the names or initials or other insignia customarily used by the Lessee on its railroad units of the same or a similar type for convenience of identification of the right of the Lessee to use and operate the Units under this Lease and to interchange the same with other railroad companies, provided such names or initials or other insignia, when placed on the Units do not conflict with any of the provisions of such Article 6.

SECTION 5. *Numbering.* Upon or before the delivery to the Lessee of each of the Units, there shall be plainly, distinctly, permanently and conspicuously marked by the manufacturer of such Unit upon each side of each such Unit, in close proximity to the words provided for in the first sentence of *Section 4* hereof, its identifying number as set forth in Schedule A hereto. The Lessee shall not change, or permit to be changed, the identifying number on any of the Units except in accordance with a statement of new number(s) to be substituted therefor, which shall previously have been filed with the Lessor and consented to by the Lessor and filed, registered or recorded in each public office where this Lease shall have been filed, registered or recorded.

SECTION 6. *Taxes.* With respect to each of the Units, the Lessee agrees that, in addition to the other payments provided herein, it will timely pay, or promptly reimburse the Lessor should payment be made by it, for all local, State or Federal, property, sales, use, gross receipts taxes in the

nature of sales taxes, occupation, franchise and other taxes (excluding any Federal income and excess profits taxes and excluding also any local or State income, gross receipts, franchise, excess profits and similar taxes, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided), fees, charges, assessments (hereinafter collectively called Impositions), (a) levied or imposed upon, measured by or exacted because of, (i) the Conditional Sale Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms thereof, (ii) the Units or the interest of the Lessee or the Lessor in such Units or the use, operation or leasing thereof or the rentals or earnings arising therefrom or (iii) the Lessor on account of its acquisition or ownership of the Units or any thereof or on account of the use, operation or leasing thereof or on account of the rentals or earnings arising therefrom, or (b) the nonpayment of which might result in any lien or encumbrance upon any of the Units or adversely affect the title or interest of the Manufacturer in or to any of the Units. The Lessee further agrees that it will promptly pay or reimburse the Lessor for any interest or penalties payable by the Lessor resultant from any delay in paying any Imposition which the Lessee has herein agreed to pay or reimburse, or from the failure of the Lessor to withhold or collect and pay over any Imposition. Notwithstanding the foregoing, the Lessee shall not be required to pay or reimburse any Imposition or any such interest or penalties so long as it shall in good faith and by appropriate legal or administrative proceedings contest the validity or amount thereof unless thereby, in the judgment of the Lessor, the rights or interests of the Lessor will be adversely affected.

In the event any reports with respect to Impositions are required to be made on the basis of individual Units, the Lessee will either make such reports in such manner as to show the interests of the Lessor in such Units or

will notify the Lessor of such requirement and will make such reports in such manner as shall be satisfactory to the Lessor.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any Impositions, interest or penalties pursuant to this *Section 6*, such liability shall continue, notwithstanding the expiration of the term of this Lease, until all Impositions, interest or penalties are paid or reimbursed by the Lessee.

SECTION 7. Maintenance; Payment for Units Suffering Casualty Occurrence. The Lessee shall at all times maintain and keep all of the Units subject to this Lease in good order and good running repair, under a repair program consistent with a useful life for each of the Units in excess of 17 years from the commencement of the term of this Lease as to such Unit, at its own cost and expense.

In the event that any Unit shall be or become worn out, lost, stolen, destroyed or irreparably damaged or otherwise rendered permanently unfit for use from any cause whatsoever (such occurrences being hereinafter called Casualty Occurrences) during the term of this Lease, the Lessee shall promptly (after it has knowledge of such Casualty Occurrence) and fully inform the Lessor in regard thereto. The Lessee shall, on the earlier of the next succeeding rental payment date in respect of such Unit, or the expiration of the term of this Lease, pay to the Lessor a sum equal to the Casualty Value of such Unit as of the date of such Casualty Occurrence. For purposes of this *Section* the term Casualty Value shall be deemed to be that proportion of the unpaid balance of the Conditional Sale Indebtedness (as defined in the Conditional Sale Agreement) in respect of the Unit as the Final Purchase Price of the Unit bears to the Final Purchase Price of all Units of such Manufacturer.

Upon making such payment in respect of any Units, rentals of such Units shall cease as of the date of such payment, the term of this Lease as to such Units shall terminate and title to and rights in such Units shall thereupon vest in Lessee. The Lessor shall promptly thereafter prepare and submit to the Lessee a revised rental payment schedule, reflecting such payment and setting forth the rental payment required by *Section 2* for all Units remaining under this Lease.

Except as hereinabove in this *Section 7* provided, the Lessee shall not be released from its obligation hereunder in the event of any Casualty Occurrence to any Unit after delivery to and acceptance thereof by the Lessee hereunder.

SECTION 8. *Annual Reports and Inspection.* The Lessee will furnish to the Lessor on or before the last day of March in each year, commencing with the year 1973, and at such other times as the Lessor shall request, during the continuance of this Lease, an accurate statement signed by one of the Vice Presidents of the Lessee, stating

A. as of the last day of the preceding calendar year, (1) the description and identifying numbers of all Units then subject to this Lease, (2) the description and identifying numbers of all Units that have suffered a Casualty Occurrence during the period elapsed since the end of the period covered by the last previous such report (or since the date hereof in the case of the first such report), and (3) such other information regarding the condition and state of repair of the Units as the Lessor may reasonably request, and

B. that, in the case of all Units repainted or repaired during such period, the marks required to be placed thereon by *Section 4* hereof have been preserved on such Units or that such Units have been again marked as required by said *Section 4* and that the identifying symbol and the appropriate car number has been repainted or preserved on each side of each such Unit in accordance with *Section 5* hereof.

The Lessor shall have the right, by its authorized representatives, to inspect the Units at such times as shall be reasonably necessary to confirm to the Lessor the existence and proper maintenance thereof during the continuance of this Lease.

SECTION 9. Compliance with Laws and Rules; and Indemnification. The Lessor makes no warranty or representation, either expressed or implied, as to the fitness, design or condition of, or as to the quality of the material, equipment or workmanship in, the Units delivered to the Lessee hereunder, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee.

The Lessee agrees to comply with all governmental laws, regulations and requirements, with the Rules of Interchange of the Association of American Railroads (or of any successor thereto), and with all lawful rules of the Interstate Commerce Commission and the Department of Transportation and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, with respect to the use, maintenance and operation by the Lessee of each Unit subject to this Lease; in case any equipment or appliance on any such Unit shall be required to be changed or replaced, or in case any additional or other equipment or appliance is required to be installed on such Unit in order to comply with such laws, regulations, requirements and Rules, effective after the date of the delivery of such Unit, the Lessee agrees to make such changes, additions and replacements; and the Lessee agrees to maintain such Unit in full compliance with such laws, regulations, requirements and Rules so long as it is subject to this Lease.

Any and all additions to the Units and any and all replacements of any parts of any Unit and additions thereto (except such as are not required pursuant to

the second paragraph of this *Section 9* and may be removed without in any way affecting or impairing either the originally intended function or the use of such Unit) shall be considered accessions to such Unit and title thereto shall be immediately vested in the owner of the Unit without cost or expense to it.

The Lessee agrees to indemnify and save harmless the Lessor against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, by reason of the Lessor's undertakings with respect to the Units pursuant to the Conditional Sale Agreement or the ownership by the Lessor of any Unit or the use or operation thereof by the Lessee while it is subject to this Lease, or in any manner arising out of or as a result of the delivery or rejection of any of the Units under this Lease or under the Conditional Sale Agreement prior to the delivery thereof under or while it is subject to this Lease or the use or operation of any Unit while it is subject to this Lease. The Lessee agrees further to indemnify and save harmless the Lessor against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Lessor (including but not limited to the Lessor's undertakings pursuant to the Conditional Sale Agreement) because of the use in or about the construction of the Units, or any thereof, of any design specified by the Lessee, or article or material specified by the Lessee, and not manufactured by the manufacturer of such Unit, which infringes, or is claimed to infringe, on any patent or other right. The indemnities contained in this paragraph shall continue in full force and effect notwithstanding the full payment of all other obligations under this Lease or the termination of this Lease in any manner whatsoever.

SECTION 10. *Default.* If, during the continuance of this Lease, one or more of the following events (herein sometimes called events of default) shall occur:

A. default shall be made in the payment of any part of the rental provided in *Section 2* hereof and such default shall continue for 30 days;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the Units, or any thereof, and shall fail or refuse to cause such assignment or transfer to be cancelled by agreement of all parties having any interest herein and to recover possession of such Units within 30 days after written notice from the Lessor to the Lessee demanding such cancellation and recovery of possession;

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein and such default shall continue for 30 days after written notice from the Lessor to the Lessee specifying the default and demanding the same to be remedied;

D. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Lessee, and all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings, or otherwise given a status comparable to the obligations incurred by such a trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier;

E. any other proceedings shall be commenced by or against the Lessee for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any

readjustment of the obligations of the Lessee hereunder), and all of the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Lessee or for the property of the Lessee in connection with any such proceedings, or otherwise given a status comparable to obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

F. if one or more of the Events of Default enumerated in Article 17 of the Conditional Sale Agreement shall occur, and shall be continuing;

then, in any such case, the Lessor, at its option, may

(a) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all right of the Lessee in or to the Units, or as to the use thereof, shall absolutely cease and determine as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon, the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units (and may use and employ, in connection with such repossession, any supplies, services and aids and any available trackage and other facilities or means of the Lessee, with or without process of law) and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination and, in the case of those events of default specified in subparagraphs A, B, C, D and

Hereof, also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, a sum which represents the excess of the present worth, at the time of such termination, of the aggregate rental for each Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of such Units over the then present worth of the fair rental value of such Units for such period, such present worth to be computed in each case on the basis of an 8% per annum discount, compounded quarterly from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, and (ii) any damages in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant or covenants herein contained.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify any of the remedies herein provided, to the extent that such waiver is permitted by law.

The failure of the Lessor to exercise the rights granted it hereunder upon any occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

SECTION 11. *Return of Units.* Upon the expiration of the term of this Lease with respect to any Unit, the Lessee shall forthwith deliver possession of such Unit, to the Lessor in good order and repair, ordinary wear and tear excepted. Upon the termination of this Lease pursuant to the provisions of *Section 10* hereof, the Lessee shall forthwith deliver possession of all Units to the Lessor in good order and repair, ordinary wear and tear excepted. For

the purpose of delivering possession of any Units to the Lessor as above required, the Lessee shall at its own cost and expense

A. forthwith assemble the Units and place them upon such storage tracks of the Lessee as the Lessor may designate or, in the absence of such designation, as the Lessee may select,

B. permit the Lessor to store the Units on such tracks for a period not exceeding 100 days at the risk of the Lessor, and

C. transport the same in such groups as the Lessor may reasonably select, at any time within such 100-day period, to any place or places on the lines of railroad operated by it or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this *Section 11*, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whosoever shall be at the time in possession of such Unit.

SECTION 12. Assignment and Possession. This Lease shall be assignable, in whole or in part, by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor.

The rights of the Lessee in and to the Units under this Lease are subject to the rights of the Manufacturers and their successors, and assigns in and to such Units under the Conditional Sale Agreement including the rights of the Manufacturers upon the happening of an Event of Default thereunder and so long as the Lessee shall not be in default under this Lease as provided in *Section 10* hereof, and the Lessor shall not be in default under the Conditional Sale Agreement as provided in Article 17 thereof, the Lessee shall be entitled to the possession and use of the Units, in accordance with the terms of this Lease, upon the lines of railroad owned or operated by the Lessee, or over which the Lessee has trackage rights, and the Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except that the Lessee may permit the use thereof or any part thereof by connecting and other railroads in the usual interchange of traffic.

The Lessee shall not, without the prior written consent of the Lessor, assign, transfer or encumber its leasehold interest under this Lease in the Units or any of them (except to the extent that the provisions of any existing mortgages or indentures affecting property of the Lessee may attach to such leasehold interest or require the same to be subjected thereto). In addition, the Lessee, at its own expense, will as soon as possible cause to be duly discharged any lien, charge or other encumbrance (except for any encumbrance resulting from any security interest created by the Lessor, including the rights of the Manufacturers under the Conditional Sale Agreement or resulting from any claim against the Lessor not related to the Lessor's rights of ownership to the Units or from the lien of existing mortgages or indentures of the Lessee as aforesaid or from Impositions with respect to which the Lessee is not required to make payment or reimbursement under

Section 6 hereof) which may at any time be imposed on or with respect to any Unit or the interest of the Manufacturers or the Lessor or the Lessee therein.

Nothing in this *Section* shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any corporation (which shall have assumed the obligations hereunder of the Lessee) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety; nor shall any assignment or transfer of such leasehold interest or of possession or control of the Units or any thereof to a receiver or trustee or other court officer appointed in any judicial proceedings under circumstances which do not constitute an event of default under *Section 10D* or *E* hereof be deemed to constitute a violation of this *Section 12*.

SECTION 13. *Purchase Option.* Not earlier than six months prior to the end of the term of this Lease with respect to each Unit and not later than two months prior thereto, the Lessee may cause the Appraiser (as hereinafter defined) to make, at the expense of the Lessee, an appraisal of the fair market value of Units comprising one or more Lots (as hereinafter defined), and the report of the Appraiser setting forth its determination of such value shall be delivered to the Lessor and the Lessee not later than one month prior to the end of the term for the Unit to be last terminated under this Lease.

If the Lessee shall cause such appraisal to be made, the Lessee may, by written notice delivered to the Lessor not later than the day before the last day of the term for the last Unit to be terminated under this Lease, elect, unless an Event of Default as defined in *Section 10* hereof shall have occurred and be continuing, to purchase all, but not fewer than all, the Units comprising any Lot, the fair market value of which shall have been so determined, such pur-

chase to be subject to the prior satisfaction in full by the Lessor of all of its obligations under the Conditional Sale Agreement and to be effective at the termination of this Lease as to such Units as provided in *Section 3* hereof and to be at an aggregate purchase price equal to such fair market value of such Units, which option purchase price shall be payable by the Lessee to the Lessor in one lump sum not later than 30 days after such election. This Lease shall continue with respect to Units which the Lessee shall have so elected to purchase beyond the term as provided in *Section 3* hereof and until the date on which such option purchase price shall have been paid in full, or July 1, 1986, whichever first occurs, at an aggregate rental of \$1 per month, such continuation being intended to protect the Lessor's rights and/or title to, and to continue all obligations of the Lessee hereunder with respect to, such Units while the purchase price in respect thereof remains unpaid. Upon payment in full of such option purchase price, the Lessor shall upon request of the Lessee execute and deliver to the Lessee, or to the Lessee's assignee or nominee a bill of sale (without representations or warranties except that such Units are free and clear of all claims, liens and encumbrances by or in favor of any person claiming by, through or under the Lessor) for such Units, and such other documents as may be required to transfer title to such Units to the Lessee or such assignee or nominee, in such form as may be reasonably requested by the Lessee, all at the Lessee's expense.

For the purposes of this *Section 13*, the Units shall be divided into two lots (each of which is hereinafter called a Lot), each Lot to consist of all of the Units which were originally manufactured by the Manufacturer thereof. The term Appraiser shall mean such independent appraiser as the Lessor and the Lessee may mutually agree upon, or, failing such agreement, a panel of three independent appraisers, one of which shall be selected by each of the Lessor and the Lessee with the third designated by the two so selected.

SECTION 14. *Opinion of Counsel.* Concurrently with the execution and delivery of this Lease, the Lessee will deliver to the Lessor the written opinion of counsel for the Lessee, in scope and substance satisfactory to the Lessor and its counsel, to the effect

A. that the Lessee is a corporation legally incorporated and validly existing, in good standing, under the laws of the State of Delaware, with adequate corporate power to enter into this Lease;

B. that this Lease has been duly authorized, executed and delivered by the Lessee and constitutes a valid, legal and binding agreement of the Lessee enforceable in accordance with its terms;

C. that if this Lease is filed with the Interstate Commerce Commission pursuant to Section 20e of the Interstate Commerce Act, it need not, in order to protect the Lessor's interest in and to the Units in the United States of America, be otherwise filed, deposited, registered or recorded with any other Federal, State or local government in the United States of America;

D. that no approval is required from any public regulatory body with respect to the entering into or performance of this Lease; and

E. that the entering into and performance of this Lease will not result in any breach of, or constitute a default under, or result in the creation of any lien, charge or encumbrance upon the Lessee's leasehold interest under this Lease in the Units (except to the extent that the provisions of any existing mortgage or indenture affecting property of the Lessee may attach to such leasehold interest or require the same to be subjected thereto) pursuant to any indenture, mortgage, deed of trust, bank loan or credit agreement or other instrument to which the Lessee is a party or by which it may be bound.

SECTION 15. *Recording.* The Lessor will, prior to the delivery of any Unit hereunder, cause this Lease to be filed and recorded with the Interstate Commerce Com-

mission in accordance with Section 20c of the Interstate Commerce Act; and the Lessee will from time to time do and perform any other act and will execute, acknowledge, deliver, file and record wherever required any and all further instruments required by law or reasonably requested by the Lessor for the purpose of proper protection, to the satisfaction of counsel for the Lessor, of its rights and/or title to the Units and its other rights under this Lease or for the purpose of carrying out the intention of this Lease.

SECTION 16. *Notices.* Any notices required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States mails, first-class postage prepaid, addressed as follows:

If to the Lessor:

UNION PACIFIC RAILROAD COMPANY,
345 Park Avenue,
New York, N. Y. 10022
Attention: Vice President—Finance

If to the Lessee:

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD
COMPANY
139 West Van Buren Street,
Chicago, Illinois 60605
Attention: Secretary

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

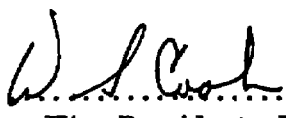
SECTION 18. *Applicable Law.* This Lease is to be construed in accordance with the laws of the State of New York; provided, however, that the parties hereto shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

SECTION 19. *Enforcement by Manufacturers and its Assignees.* The provisions of this Lease, as they relate to a Manufacturer, are for the benefit of the Manufacturer and may be enforced by the Manufacturer to the same extent as if it were a party hereto, as a third party beneficiary hereof, without any assignment thereof to the Manufacturer and without any responsibility by the Lessor in connection therewith.


SECTION 20. *Execution in Counterparts.* This Lease, and any lease supplemental hereto, may be executed in several counterparts, each of which so executed shall be deemed to be an original, and in each case such counterparts together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the Lessor and the Lessee, pursuant to due corporate authority, have caused these presents to be signed in their respective corporate names and their respective corporate seals to be hereunto affixed, duly attested, as of the day and year first above written.

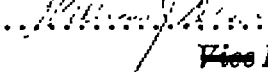
UNION PACIFIC RAILROAD COMPANY,
Lessor,

By .. 
Vice President—Finance.


Attest:

..... 
Assistant Secretary.

CHICAGO, ROCK ISLAND AND PACIFIC
RAILROAD COMPANY,
Lessee,

By .. 
Vice President.

Attest:

..... 
Secretary.

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

On this 17th day of August, 1971, before me personally appeared *William J. Dixon*, to me personally known, who, being by me duly sworn, says that he is a Vice President of UNION PACIFIC RAILROAD COMPANY, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Elizabeth L. Galpine
Notary Public

ELIZABETH L. GALPINE
Notary Public, State of New York
No. 30851000

Qualified in Nassau County
Certificate filed in N.Y. Co. Clerk's Office
Commission Expires March 30, 1972

STATE OF ILLINOIS }
COUNTY OF COOK } ss.:

On this 5th day of August, 1971, before me personally appeared *William J. Dixon*, to me personally known, who, being by me duly sworn, says that he is a Vice President of CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Richard Allen
Notary Public

NOTARY PUBLIC STATE OF ILLINOIS
MY COMMISSION EXPIRES DEC. 2, 1974

SCHEDULE A

<u>Manufacturer</u>	<u>Type</u>	<u>Specifications</u>	<u>Quantity</u>	<u>Unit Numbers</u>	<u>Unit Base Price</u>	<u>Aggregate Base Price</u>	<u>Time and Place of Delivery</u>
International Car	All steel bay window Caboose	Company's P.O. No 6283-12, dated May 20, 1971 and accepted June 1, 1971	10	RI 17202-17211, both inclusive	\$27,500	\$ 275,000	October, 1971 Blue Island, Illinois
Darby	100-ton, 3600 cu. ft. capacity Open Top Hopper Car	Company's P.O. No. 6282-25, dated May 10, 1971 and accepted May 20, 1971	100	RI 102000-102099, both inclusive	15,985	1,598,500	August-September, 1971 Manufacturer's Plant, Kansas City, Kansas

7/01/71

JOB C51120 ROCK ISLAND RAILROAD
LIST OF CARS TO BE REHABILITATED WITH FUNDS
PROVIDED BY SECTION 511, 4 R ACT LOAN

PAGE 32

INIT	NUMBER	CAR TYPE	O/L	LESSOR	TALLY
RI	102050	HPR-OP	L	K25	
TYPE TOTAL					1
RI	17209	CABOOSE	L	K25	
RI	17211	CABOOSE	L	K25	
TYPE TOTAL					2
LESSOR TOTAL					3

Lease of May 1, 1971